RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—RAILROAD RIGHT OF WAY.—Defendant, by deed, acquired title to a right of way, fifty feet wide and fenced within four feet of the line. Plaintiff owned the adjoining tract and more than ten years before this action was brought, planted fruit trees up to the fence. *Held,* the Statute of Limitations did not run against defendant as to the four foot strip. *Beyer* v. *Chicago, R. I. & P. R. Co.,* (Ia. 1918), 169 N. W. 651.

The majority, recognizing the conflict in the decisions in other states, purports to decide in accordance with the weight of authority in Iowa, notably the case of *Barlow* v. *C. R. I. & P. R. Co.,* 29 Ia. 276 and also *Slocumb* v. *C. B. & Q. R. Co.,* 57 Ia. 675. It erroneously cites the *Barlow Case, supra,* as authority for the proposition "that the Statute of Limitations does not apply where the easement was acquired by deed." In that case Barlow conveyed, to the defendant's grantors by deed, subject to reversion, etc., the right of way, at the time under cultivation. Later he conveyed to plaintiff who had notice of the Company's claim and used the tract as had his predecessor. *Held,* that the Railway did not lose its right by nonuser. The Court says, "if the easement has been acquired by deed, no length of time of mere nonuser will operate to impair or defeat the right * * * In this case there was no use of the premises *adverse* to the Defendant's right." No reference is made to conveyances by deed as exempt from the operation of the Statute. The plaintiff, having taken with notice, had by no overt act in change of use or otherwise, shown any intention to claim more than his grantor who held subject to the right of way. In this, it differs from the instant case where the Railway Company put up the fence and plaintiff and her predecessors, none of whom appear to have been the grantors of the Railway Company, cultivated the land up to it. The difference in facts would easily warrant an assumption of acquiescence in the boundary line or adverse possession in the instant case, while not in the *Barlow Case.* In *Slocumb* v. *Railway Co., supra,* plaintiff's deed read "subject to any right of way" the Railway might own over the land. In *Ry. Co.* v. *Hanken,* 140 Ia. 372, it was held that the platting of depot grounds had not fixed its boundaries which would then be determined by the location of the fence. In *Ry. Co.* v. *Homan,* 151 Ia. 404, it was a question of how much of the land had been accepted by the Railway. In *Helmick* v. *Ry. Co.,* 174 Ia. 558, it was held that a railway company by acquiescence in a fixed boundary line would be concluded thereby. None of these cases deny the right to acquire right of way lands by adverse possession. On analogy of the facts, the present case might better have been decided on the authority of the *Helmick Case* rather than on that of the *Barlow Case.* The authorities in other jurisdictions are in conflict. Some courts take the view that a railroad, enjoying the right of eminent domain, is quasi-public and it is, therefore, contrary to public policy to subject it to the burden of adverse possession. *Southern Pac. Co.* v. *Hyatt,* 132 Cal. 240; *Conwell* v. *Phil. & R. R. Co.* 241 Pa. 172; *McLucas* v. *St. Joseph & G. I. K. Co.,* 67 Neb. 603. In

jurisdictions where the matter has been left with the courts independent of statute, the weight of authority is decidedly in favor of the right. *Chicago, etc. R. Co.* v. *Abbot,* 215 Ill. 416; *Northern Pac. R. Co.* v. *Townsend,* 84 Minn. 152: see also 2 Va. L. Rev. 599. In Vermont, New Hampshire, Massachusetts, North Carolina and Nebraska, statutes or other constitutional provisions have declared railroads exempt from such burden.

BAILMENTS—LIEN OF BAILEE.—Three late cases throw light on recent developments in the law of lien. *The Gulfport,* 250 Fed. 577, holding that a bailee who has performed services on a chattel does not lose his lien if he loses possession of the chattel through the act of God, and *Crucible Steel Co.* v. *Polack Tyre & Rubber Co.* (N. J. 1918) 104 Atl. 324 and *Hiner* v. *Bitts* (Oreg. 1918) 175 Pac. 133, both upholding statutory liens on chattels, notwithstanding the bailee had parted with possession. The favor with which the law regarded the special lien has been well set forth by Gibson, C. J. in *Steinman* v. *Wilkins,* 7 W. & S. 466, and by Bronson, J., in *Grinnell* v. *Cook,* 3 Hill 485. The limitations on the value of this right are well brought out by Shaw, C. J., in *Doane* v. *Russell,* 3 Gray 382. These restrictions have prevented the common law lien from keeping pace with the needs of a changing world, and as the courts, which had let in the lien without the aid of statutes, refused to remove these restrictions in the same way, the recent development of the lien as a remedial instrument in the hand of the bailee has had to depend upon statutes.

The chief defects in the remedy of the lien were in the want of a power of sale and in the loss of lien by loss of possession. Possession is the life of the lien and a lien cannot survive possession, said Ryan, C. J. in *Sensenbrenner* v. *Matthews,* 48 Wis. 250. But in these days much beneficial labor is performed on property or chattels of a kind, or under circumstances, not permitting the bailee to have or to keep possession. Hence the statutory lien on a house in favor of the builder and the material man. Hence, also, the statutory lien on the donkey engine in the Oregon case, *supra,* for all the work done on the engine at various times under one contract, and in the New Jersey case, *supra,* the garageman's lien on the automobile for the price of the tires he had put on the machine. In this case the court held the statute not unconstitutional as depriving of his property without due process of law a third party who in ignorance of the lien had purchased it. Doubtless a statute might be so framed as to do so, but this merely extended the common-law lien so as to enable a bailee to retake property which has gone out of his possession and enforce his lien upon it. Donkey engines and automobiles and gasoline and many other things that are repaired or furnished these days did not exist at common law, and do not take kindly to the possession requirement. The lien must keep pace with progress.

BANKRUPTCY—ASSIGNMENT OF WAGES UNAFFECTED BY DISCHARGE.—In a suit to reform an assignment of wages to be earned in the future given by an employe of defendant to complainant to secure a note for borrowed money, it was contended that a discharge in bankruptcy granted to the assignor, in a